

REG-35-112 BURDEN OF PROOF

112.01 The burden of proof in the following proceedings shall be on the taxpayer:

112.01A A hearing in the case of a claim for refund of tax; and

112.01B A hearing requested by a petitioner for a redetermination of a Notice of Deficiency Determination or Notice of Jeopardy Deficiency Determination.

112.02 The burden of proof in the following proceedings shall be on the Nebraska Department of Revenue:

112.02A A hearing requested by a petitioner for a redetermination of a license or permit application denial.

112.02B A hearing initiated by the Nebraska Department of Revenue to suspend, cancel or revoke a license or permit. In the case of suspension of a license or permit, if the Department has met its burden of proof in showing violations of Chapter 9 on the part of the licensee, the licensee may present evidence showing that such previous violations have been corrected and that the licensee is now in compliance with Chapter 9. Should the licensee seek to make such a showing, the burden of proof of showing correction of previous violations and present statutory compliance shall be on the licensee. If the licensee makes such a showing, the Tax Commissioner may lift the suspension imposed on the licensee.

112.02C A hearing requested by a licenseholder or permittee for a review of a cease and desist order issued by the State Tax Commissioner. The Department shall have the burden of proof of showing the licensee has violated Chapter 9 justifying the imposition of such an order. At such a hearing, the Tax Commissioner must determine whether to vacate such order or make it permanent. A licensee on whom a cease and desist order has been imposed may present evidence that past violations of Chapter 9 have been corrected and that the licensee is in compliance with the law. The burden of proof in such a showing shall be on the licensee and, if such showing is made, the Tax Commissioner shall vacate the order.

112.02D A hearing initiated by the Nebraska Department of Revenue to impose an administrative fine on a licenseholder or permittee pursuant to the Nebraska Pickle Card Lottery Act.

(Sections 9-418, 9-612, 77-369, 77-2703(2)(e), 77-2781, and 84-909, R.R.S. 1943. Sections 9-226, 9-226.01, 9-227, 9-322, 9-322.02, and 9-323, R.S.Supp., 1988. January 3, 1990.)